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INC. formerly known as HAMILTON SPECIALTY INSURANCE COMPANY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

VOYAGER INDEMNITY INSURANCE
COMPANY, MATO MILOGLAV, MARE
MILOGLAV, AND ANNETTE IVANKO,

Plaintiffs,

v.

BLACKBOARD SPECIALTY
INSURANCE COMPANY, INC. AS
SUCCESSOR IN INTEREST TO
HAMILTON SPECIALTY
INSURANCE COMPANY, INC.,

Defendant.

CASE NO.: 5:20-CV-07722-LHK

**BLACKBOARD SPECIALTY
INSURANCE COMPANY, INC.
FORMERLY KNOWN AS
HAMILTON SPECIALTY
INSURANCE COMPANY, INC.’s
ANSWER TO PLAINTIFFS’
COMPLAINT FOR
DECLARATORY RELIEF,
CONTRIBUTION, BREACH OF
CONTRACT, AND BAD FAITH**

Judge: Hon. Lucy H. Koh

Date Action Filed: November 2, 2020

Defendant BLACKBOARD SPECIALTY INSURANCE COMPANY, formerly known as
HAMILTON SPECIALTY INSURANCE COMPANY, INC. (“Blackboard”) hereby answers
Plaintiffs VOYAGER INDEMNITY INSURANCE COMPANY, MATO MILOGLAV, MARE
MILOGLAV, and ANNETTE IVANKO (collectively, “Plaintiffs”) Complaint, and denies and
admits the allegations therein as follows:

INTRODUCTION

1. Answering paragraph 1 of the Complaint, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

2. Answering paragraph 2 of the Complaint, Blackboard denies it has unreasonably denied a defense to the Miloglavs and Ivanko. As to the remainder of paragraph 2, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

PARTIES

3. Answering paragraph 3 of the Complaint, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

4. Answering paragraph 4 of the Complaint, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

5. Answering paragraph 5 of the Complaint, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

6. Answering paragraph 6 of the Complaint, Blackboard is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

7. Answering paragraph 7 of the Complaint, Blackboard admits the allegations in said paragraph.

8. Answering paragraph 8 of the Complaint, Blackboard admits that it was formerly known as Hamilton Specialty Insurance Company, including with respect to policy number AAHS1000009104, for the period March 1, 2017 to March 1, 2018, issued by Hamilton Specialty Insurance Company to Mare and Mato Miloglav. As to the remainder of the allegations in said paragraph, Blackboard is without sufficient knowledge or information to form a belief as to the

1 truth of the allegations contained in said paragraph, and on that basis denies each and every
2 allegation contained therein.

3 9. Answering paragraph 9 of the Complaint, Blackboard admits it is a corporation
4 organized and existing under the laws of the State of Delaware. As to the remainder of said
5 paragraph, Blackboard denies each and every allegation contained therein.

6 JURISDICTION AND VENUE

7 10. Answering paragraph 10 of the Complaint, Blackboard is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 11. Answering paragraph 11 of the Complaint, Blackboard is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 12. Answering paragraph 12 of the Complaint, Blackboard would admit this action
14 concerns an underlying case styled as *Summer Lewis, et al. v. Mato Miloglav, Individually and as*
15 *Trustee for the Mato and Mare Miloglav Trust, et al.*, Case No. 18CV03218 (the “Underlying
16 Lawsuit”). As to the remainder of paragraph 12, Blackboard is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations contained in said paragraph, and on
18 that basis denies each and every remaining allegation contained therein.

19 13. Answering paragraph 13 of the Complaint, Blackboard is without sufficient
20 knowledge or information to form a belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein.

22 FACTUAL BACKGROUND

23 A. The Policies

24 14. Answering paragraph 14 of the Complaint, Blackboard would admit Hamilton
25 Specialty Insurance Company issued policy number AAHS1000009104 to named insureds Mare
26 and Mato Miloglav, for the period March 1, 2017 to March 1, 2018 (“Blackboard Policy”), the
27 terms of which are set forth therein. As to the remainder of paragraph 14, Blackboard is without
28 sufficient knowledge or information to form a belief as to the truth of the allegations contained in

1 said paragraph, and on that basis denies each and every remaining allegation contained therein. To
2 the extent the allegations constitute legal arguments as opposed to factual allegations, such legal
3 arguments are disputed.

4 15. Answering paragraph 15 of the Complaint, Blackboard would admit that the
5 provisions of any policy issued by Blackboard are as set forth in such policy. Blackboard
6 otherwise denies each and every allegation contained therein.

7 16. Answering paragraph 16 of the Complaint, Blackboard would admit that the
8 Blackboard Policy contains the provisions set forth in the Blackboard Policy. Blackboard
9 otherwise denies each and every allegation contained in this paragraph.

10 17. Answering paragraph 17 of the Complaint, Blackboard would admit that the
11 Blackboard Policy contains the provisions set forth in the policy. Blackboard otherwise denies
12 each and every allegation contained in this paragraph.

13 18. Answering paragraph 18 of the Complaint, Blackboard would admit that the
14 Blackboard Policy contains the provisions set forth in the Blackboard Policy. Blackboard
15 otherwise denies each and every allegation contained in this paragraph. To the extent the
16 allegations constitute legal arguments as opposed to factual allegations, such legal arguments are
17 disputed

18 19. Answering paragraph 19 of the Complaint, Blackboard would admit that the
19 Blackboard Policy contains the provisions set forth in the Blackboard Policy. Blackboard
20 otherwise denies each and every allegation contained in this paragraph. To the extent the
21 allegations constitute legal arguments as opposed to factual allegations, such legal arguments are
22 disputed..

23 20. Answering paragraph 20 of the Complaint, Blackboard is without sufficient
24 knowledge or information to form a belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein.

26 21. Answering paragraph 21 of the Complaint, Blackboard is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations contained in said
28 paragraph, and on that basis denies each and every allegation contained therein.

1 22. Answering paragraph 22 of the Complaint, Blackboard is without sufficient
2 knowledge or information to form a belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein.

4 23. Answering paragraph 23 of the Complaint, Blackboard is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in said
6 paragraph, and on that basis denies each and every allegation contained therein.

7 24. Answering paragraph 24 of the Complaint, Blackboard is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 **B. The Underlying Lawsuit**

11 25. Answering paragraph 25 of the Complaint, Blackboard is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations contained in said
13 paragraph, and on that basis denies each and every allegation contained therein.

14 26. Answering paragraph 26 of the Complaint, Blackboard is without sufficient
15 knowledge or information to form a belief as to the truth of the allegations contained in said
16 paragraph, and on that basis denies each and every allegation contained therein.

17 27. Answering paragraph 27 of the Complaint, Blackboard is without sufficient
18 knowledge or information to form a belief as to the truth of the allegations contained in said
19 paragraph, and on that basis denies each and every allegation contained therein.

20 28. Answering paragraph 28 of the Complaint, Blackboard is without sufficient
21 knowledge or information to form a belief as to the truth of the allegations contained in said
22 paragraph, and on that basis denies each and every allegation contained therein.

23 29. Answering paragraph 29 of the Complaint, Blackboard is without sufficient
24 knowledge or information to form a belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein.

26 30. Answering paragraph 30 of the Complaint, Blackboard is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations contained in said
28 paragraph, and on that basis denies each and every allegation contained therein. Blackboard would

1 admit that the Third Amended Complaint contains the allegations set forth therein. Blackboard
2 otherwise denies each and every allegation contained in this paragraph.

3 31. Answering paragraph 31 of the Complaint, Blackboard is without sufficient
4 knowledge or information to form a belief as to the truth of the allegations contained in said
5 paragraph, and on that basis denies each and every allegation contained therein.

6 32. Answering paragraph 32 of the Complaint, Blackboard is without sufficient
7 knowledge or information to form a belief as to the truth of the allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein.

9 33. Answering paragraph 33 of the Complaint, Blackboard is without sufficient
10 knowledge or information to form a belief as to the truth of the allegations contained in said
11 paragraph, and on that basis denies each and every allegation contained therein.

12 34. Answering paragraph 34 of the Complaint, Blackboard is without sufficient
13 knowledge or information to form a belief as to the truth of the allegations contained in said
14 paragraph, and on that basis denies each and every allegation contained therein.

15 35. Answering paragraph 35 of the Complaint, Blackboard is without sufficient
16 knowledge or information to form a belief as to the truth of the allegations contained in said
17 paragraph, and on that basis denies each and every allegation contained therein.

18 **C. Hamilton's Coverage Denial**

19 36. Answering paragraph 36 of the Complaint, Blackboard would admit it received
20 correspondence from Kelley Salomaa on behalf of the Miloglavs, dated June 26, 2018, from
21 Bonnie Margaret Ross on behalf of the Miloglavs, dated February 17, 2020, and from John S.
22 Burton on behalf of Ivanko, dated February 18, 2020, that contains the content set forth therein.
23 Blackboard otherwise denies each and every allegation contained in this paragraph. To the extent
24 the allegations constitute legal arguments as opposed to factual allegations, such legal arguments
25 are disputed.

26 37. Answering paragraph 37 of the Complaint, Blackboard would admit it received
27 correspondence from Kelley Salomaa on behalf of the Miloglavs, dated June 26, 2018, that
28 contains the content set forth therein. Blackboard otherwise denies each and every allegation

1 contained in this paragraph. To the extent the allegations constitute legal arguments as opposed to
2 factual allegations, such legal arguments are disputed.

3 38. Answering paragraph 38 of the Complaint, Blackboard would admit that any
4 correspondence issued by Blackboard to its insureds contains the information set forth therein.
5 Blackboard otherwise denies each and every allegation contained in this paragraph.

6 39. Answering paragraph 39 of the Complaint, Blackboard would admit it received
7 correspondence from John S. Burton on behalf of Ivanko dated February 18, 2020, that contains
8 the content set forth therein. Blackboard otherwise denies each and every allegation contained in
9 this paragraph. To the extent the allegations constitute legal arguments as opposed to factual
10 allegations, such legal arguments are disputed.

11 40. Answering paragraph 40 of the Complaint, Blackboard would admit that any
12 correspondence issued by Blackboard to its insureds contains the information set forth therein.
13 Blackboard otherwise denies each and every allegation contained in this paragraph.. Blackboard
14 otherwise denies each and every allegation contained in this paragraph.

15 41. Answering paragraph 41 of the Complaint, Blackboard denies each and every
16 allegation therein.

17 42. Answering paragraph 42 of the Complaint, Blackboard denies each and every
18 allegation therein.

19 43. Answering paragraph 43 of the Complaint, Blackboard denies each and every
20 allegation therein.

21 **FIRST CLAIM FOR RELIEF**

22 **(Declaratory Relief – by All Plaintiffs)**

23 44. Answering paragraph 44 of the Complaint, Blackboard re-alleges, and incorporates
24 by reference each and every denial, admission, and allegation contained in paragraphs 1 through
25 43 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation
26 of paragraph 44 of the Complaint.

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1 allegation contained therein. To the extent the allegations constitute legal arguments as opposed to
2 factual allegations, such legal arguments are disputed.

3 53. Answering paragraph 53 of the Complaint, Blackboard denies each and every
4 allegation therein.

5 54. Answering paragraph 54 of the Complaint, Blackboard denies each and every
6 allegation therein.

7 55. Answering paragraph 55 of the Complaint, Blackboard would admit that it has not
8 defended the Miloglavs in the Underlying Lawsuit. Blackboard would admit it received
9 correspondence from Kelley Salomaa on behalf of the Miloglavs, dated June 26, 2018, and from
10 Bonnie Margaret Ross on behalf of the Miloglavs, dated February 17, 2020, that contains the
11 content set forth therein. As to the remainder of paragraph 55, Blackboard denies each and every
12 allegation therein. To the extent the allegations constitute legal arguments as opposed to factual
13 allegations, such legal arguments are disputed.

14 56. Answering paragraph 56 of the Complaint, Blackboard denies that it is obligated to
15 share in defense costs incurred by Voyager. As to the remainder of paragraph 56, Blackboard is
16 without sufficient knowledge or information to form a belief as to the truth of the allegations
17 contained in said paragraph, and on that basis denies each and every remaining allegation
18 contained therein.

19 57. Answering paragraph 57 of the Complaint, Blackboard denies each and every
20 allegation therein.

21 **THIRD CLAIM FOR RELIEF**

22 **(Contribution – by Voyager)**

23 58. Answering paragraph 58 of the Complaint, Blackboard re-alleges, and incorporates
24 by reference each and every denial, admission, and allegation contained in paragraphs 1 through
25 57 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation
26 of paragraph 58 of the Complaint.

27 59. Answering paragraph 59 of the Complaint, Blackboard would admit that the
28 Blackboard Policy contains the provisions set forth in the policy. As to the remainder of paragraph

1 59, Blackboard is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations contained in said paragraph, and on that basis denies each and every remaining
3 allegation contained therein. To the extent the allegations constitute legal arguments as opposed to
4 factual allegations, such legal arguments are disputed.

5 60. Answering paragraph 60 of the Complaint, Blackboard would admit that the
6 pleadings in the Underlying Lawsuit contain the allegations set forth therein. Blackboard
7 otherwise denies each and every allegation contained in this paragraph. To the extent the
8 allegations constitute legal arguments as opposed to factual allegations, such legal arguments are
9 disputed.

10 61. Answering paragraph 61 of the Complaint, Blackboard denies each and every
11 allegation therein.

12 62. Answering paragraph 62 of the Complaint, Blackboard denies each and every
13 allegation therein.

14 63. Answering paragraph 63 of the Complaint, Blackboard would admit that it has not
15 defended Ivanko in the Underlying Lawsuit. Blackboard would admit it received correspondence
16 from John S. Burton on behalf of Ivanko dated February 18, 2020, that contains the content set
17 forth therein. Blackboard otherwise denies each and every allegation contained in this paragraph.
18 To the extent the allegations constitute legal arguments as opposed to factual allegations, such
19 legal arguments are disputed.

20 64. Answering paragraph 64 of the Complaint, Blackboard denies that it is obligated to
21 share defense costs with Voyager. As to the remainder of paragraph 64, Blackboard is without
22 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
23 said paragraph, and on that basis denies each and every remaining allegation contained therein.

24 65. Answering paragraph 65 of the Complaint, Blackboard denies each and every
25 allegation therein.

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FOURTH CLAIM FOR RELIEF**(Breach of Contract – by the Miloglavs)**

66. Answering paragraph 66 of the Complaint, Blackboard re-alleges, and incorporates by reference each and every denial, admission, and allegation contained in paragraphs 1 through 65 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation of paragraph 66 of the Complaint.

67. Answering paragraph 67 of the Complaint, Blackboard would admit that the Blackboard Policy contains the provisions set forth in the policy. Blackboard otherwise denies each and every allegation contained in this paragraph. To the extent the allegations constitute legal arguments as opposed to factual allegations, such legal arguments are disputed.

68. Answering paragraph 68 of the Complaint, Blackboard would admit that the Blackboard Policy contains the provisions set forth in the policy. Blackboard otherwise denies each and every allegation contained in this paragraph. To the extent the allegations constitute legal arguments as opposed to factual allegations, such legal arguments are disputed.

69. Answering paragraph 69 of the Complaint, Blackboard denies each and every allegation therein.

70. Answering paragraph 70 of the Complaint, Blackboard denies each and every allegation therein.

FIFTH CLAIM FOR RELIEF**(Bad Faith – by the Miloglavs)**

71. Answering paragraph 71 of the Complaint, Blackboard re-alleges, and incorporates by reference each and every denial, admission, and allegation contained in paragraphs 1 through 70 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation of paragraph 71 of the Complaint.

72. Answering paragraph 72 of the Complaint, Blackboard denies each and every allegation therein.

73. Answering paragraph 73 of the Complaint, Blackboard denies each and every allegation therein.

1 74. Answering paragraph 74 of the Complaint, Blackboard denies each and every
2 allegation therein.

3 75. Answering paragraph 75 of the Complaint, Blackboard would admit it received
4 correspondence from Kelley Salomaa on behalf of the Miloglavs, dated June 26, 2018, and from
5 Bonnie Margaret Ross on behalf of the Miloglavs, dated February 17, 2020, that contains the
6 content set forth therein. As to the remainder of paragraph 75, Blackboard denies each and every
7 allegation therein. To the extent the allegations constitute legal arguments as opposed to factual
8 allegations, such legal arguments are disputed.

9 76. Answering paragraph 76 of the Complaint, Blackboard would admit that its
10 correspondence with the insureds contains the language set forth therein. Blackboard otherwise
11 denies each and every allegation contained in this paragraph.

12 77. Answering paragraph 77 of the Complaint, Blackboard denies each and every
13 allegation contained therein. .

14 78. Answering paragraph 78 of the Complaint, Blackboard denies each and every
15 allegation therein.

16 79. Answering paragraph 79 of the Complaint, Blackboard denies each and every
17 allegation therein.

18 80. Answering paragraph 80 of the Complaint, Blackboard denies each and every
19 allegation therein

20 81. Answering paragraph 81 of the Complaint, Blackboard denies each and every
21 allegation therein.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Breach of Contract – by Ivanko)**

24 82. Answering paragraph 82 of the Complaint, Blackboard re-alleges, and incorporates
25 by reference each and every denial, admission, and allegation contained in paragraphs 1 through
26 81 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation
27 of paragraph 82 of the Complaint.

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1 83. Answering paragraph 83 of the Complaint, would admit that the Blackboard Policy
2 contains the provisions set forth in the policy. Blackboard otherwise denies each and every
3 allegation contained in this paragraph. To the extent the allegations constitute legal arguments as
4 opposed to factual allegations, such legal arguments are disputed.

5 84. Answering paragraph 84 of the Complaint, Blackboard would admit that the
6 Blackboard Policy contains the provisions set forth in the policy. Blackboard otherwise denies
7 each and every allegation contained in this paragraph. To the extent the allegations constitute legal
8 arguments as opposed to factual allegations, such legal arguments are disputed.

9 85. Answering paragraph 85 of the Complaint, Blackboard denies each and every
10 allegation therein.

11 86. Answering paragraph 86 of the Complaint, Blackboard denies each and every
12 allegation therein.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(Bad Faith – by Ivanko)**

15 87. Answering paragraph 87 of the Complaint, Blackboard re-alleges, and incorporates
16 by reference each and every denial, admission, and allegation contained in paragraphs 1 through
17 86 above. Except as specifically admitted or alleged, Blackboard denies each and every allegation
18 of paragraph 87 of the Complaint.

19 88. Answering paragraph 88 of the Complaint, Blackboard denies each and every
20 allegation therein.

21 89. Answering paragraph 89 of the Complaint, Blackboard denies each and every
22 allegation therein.

23 90. Answering paragraph 90 of the Complaint, Blackboard denies each and every
24 allegation therein.

25 91. Answering paragraph 91 of the Complaint, Blackboard would admit it received
26 correspondence from John S. Burton on behalf of Ivanko dated February 18, 2020, that contains
27 the content set forth therein. As to the remainder of paragraph 91, Blackboard denies each and

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1 every allegation therein. To the extent the allegations constitute legal arguments as opposed to
2 factual allegations, such legal arguments are disputed.

3 92. Answering paragraph 92 of the Complaint, Blackboard would admit that its
4 correspondence with the insureds contains the language set forth therein. Blackboard otherwise
5 denies each and every allegation contained in this paragraph

6 93. Answering paragraph 93 of the Complaint, Blackboard denies each and every
7 allegation therein.

8 94. Answering paragraph 94 of the Complaint, Blackboard denies each and every
9 allegation therein.

10 95. Answering paragraph 95 of the Complaint, Blackboard denies each and every
11 allegation therein.

12 96. Answering paragraph 96 of the Complaint, Blackboard denies each and every
13 allegation therein.

14 97. Answering paragraph 97 of the Complaint, Blackboard denies each and every
15 allegation therein.

16 98. Answering paragraph 98 of the Complaint, Blackboard denies each and every
17 allegation therein.

18 **PRAYER**

19 Blackboard denies that Plaintiffs are entitled to any relief whatsoever under the Complaint
20 and on that basis, Blackboard denies all paragraphs of Plaintiffs' prayer for relief.

21 **AFFIRMATIVE DEFENSES**

22 Blackboard sets forth its separate and distinct defenses to apprise Plaintiffs of certain
23 potentially applicable defenses to any and all claims alleged in their Complaint. Blackboard
24 reserves the right to reevaluate, restate or delete any defenses or to add any additional defenses.
25 By listing any matter as a defense, Blackboard does not assume the burden of proving any matter
26 upon which Plaintiffs bear the burden of proof under applicable law. Defense headings are for ease
27 of reference only and shall not be considered when interpreting the asserted defense. Blackboard
28 alleges that the Underlying Lawsuit is still pending as of the date of filing this Answer, and by

1 setting forth the following affirmative defenses, Blackboard does not waive the right to amend the
2 affirmative defenses asserted herein and/or assert additional affirmative defenses as the facts
3 develop. Subject to such allegations, Blackboard asserts the following affirmative defenses:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim Upon Which Relief may be Granted)**

6 1. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
7 claims are barred or limited, in whole or in part, to the extent Plaintiffs' Complaint fails to state a
8 claim upon which relief can be granted against Blackboard.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Failure to Set Forth Facts Which Give Rise to a Claim)**

11 2. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
12 claims are barred or limited, in whole or in part, to the extent Plaintiffs' Complaint fails to set forth
13 facts that give rise to a claim against Blackboard.

14 **THIRD AFFIRMATIVE DEFENSE**

15 **(Policy Provisions Bar Claims)**

16 3. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
17 claims are barred or limited, in whole or in part, as the Policy, as defined by the allegations of
18 paragraph 14 of Plaintiffs' Complaint, and/or any other policies issued by Blackboard, are not
19 triggered and/or there is no potential for coverage for the claims asserted in the Underlying Lawsuit,
20 and that the obligations of Blackboard, if any, are limited and/or modified by the terms, exclusions,
21 conditions, definitions, declarations, endorsement, and/or limitations contained in the Policy or
22 policies issued by Blackboard.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Complaint Fails to State Claim Allowing Attorneys' Fees)**

25 4. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
26 Complaint fails to state a claim upon which an award of attorneys' fees can be granted, and/or fails
27 to the extent Plaintiffs have failed to set forth facts sufficient to support an award for attorneys'
28 fees.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

5. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent the equitable doctrine of laches applies.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent the equitable doctrine of unclean hands applies.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

7. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent that Plaintiffs have engaged in conduct and activities sufficient to constitute waiver or by the equitable doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Acts or Omissions Not Legal Cause of Damages)

8. As a separate and distinct affirmative defense, Blackboard alleges that the acts and/or omissions, if any, of Blackboard were not the legal cause for losses, damages or injuries alleged in Plaintiffs' Complaint.

NINTH AFFIRMATIVE DEFENSE

(Plaintiffs Lack Standing)

9. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or part, to the extent some or all Plaintiffs lack standing to bring this action.

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TENTH AFFIRMATIVE DEFENSE

(Handled In Accordance With Any And All Obligations Under The Policy)

10. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, as the Underlying Lawsuit was handled in accordance with any and all obligations under the Policy issued by Blackboard.

ELEVENTH AFFIRMATIVE DEFENSE

(Defendant Acted Reasonably and in Good Faith)

11. As a separate and distinct affirmative defense, Blackboard acted reasonably and in good faith in handling the Underlying Lawsuit and/or to the extent the genuine dispute doctrine applies.

TWELFTH AFFIRMATIVE DEFENSE

(No Duty to Defend)

12. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent Blackboard has no duty to defend Plaintiffs under the Policy issued by Blackboard.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Duty to Indemnify)

13. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent Blackboard has no duty to indemnify Plaintiffs under the Policy issued by Blackboard.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Assist or Cooperate)

14. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent the Miloglavs and/or Ivanko failed to assist and cooperate with Blackboard, as required by the Policy issued by Blackboard.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Perform Obligations/Conditions)

15. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent any named insured failed to perform all conditions/obligations under the Policy issued by Blackboard.

SIXTEENTH AFFIRMATIVE DEFENSE

(Mitigation Obligation)

16. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs failed to exercise reasonable care and diligence to avoid, mitigate, minimize and/or avoid damages allegedly sustained, and Plaintiffs may not recover for losses that could have been prevented by their reasonable efforts or expenditures, and any recovery against Blackboard must be reduced by the amount by which the damages incurred are a result of such failure.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Claims Not Payable as Damages)

17. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent that claims sought in this matter do not seek relief which would be payable as damages under the Policy issued by Blackboard.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Set-Off Entitlement)

18. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs and/or any other insured will and/or has already recovered amounts from other sources, including but not limited to settlements with other insurers or indemnitors, and Blackboard is entitled to reduce or offset amounts potentially recoverable, if any, from Blackboard.

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NINETEENTH AFFIRMATIVE DEFENSE

(Proper Allocation Required)

19. As a separate and distinct affirmative defense, Blackboard alleges that to the extent Blackboard is found to have any obligation with regard to the Underlying Lawsuit, which Blackboard denies, Blackboard is entitled to a proper allocation of the loss as between Blackboard, other insurers, and any other potentially obligated parties, and such allocation may result in no sums being allocated to Blackboard.

TWENTIETH AFFIRMATIVE DEFENSE

(No Coverage for Non-Insured)

20. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent those claims arise out of claims against any person or entity not an insured under the Policy issued by Blackboard.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Bodily Injury or Property Damage)

21. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit do not constitute "bodily injury" or "property damage" as those terms are defined in the Policy issued by Blackboard.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Occurrence)

22. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit do not constitute an "occurrence" as that term is defined in the Policy issued by Blackboard.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Bodily Injury or Property Damage During Policy Period)

23. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit did not occur during the policy period of the Policy issued by Blackboard.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Personal and Advertising Injury)

24. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit do not constitute "personal and advertising injury" offense(s) as the term is defined in the Policy issued by Blackboard.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Personal and Advertising Injury During Policy Period)

25. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit were not caused by an offense committed during the policy period of the Policy issued by Blackboard .

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Violation Of Habitability Laws And Regulations Exclusion Endorsement)

26. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the claims asserted in the Underlying Lawsuit arose out of or resulted from one or more of the alleged or actual items of the Violation of Habitability Laws and Regulations Exclusion endorsement to the Policy issued by Blackboard.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Expected or Intended Damages)

27. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the damages sought in the Underlying Lawsuit were expected or intended by the insured(s).

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Damage to Property)

28. Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent some or all of the damages sought in the Underlying Lawsuit arise out of property damage to property an insured owns, rents, or occupies, including any costs or expenses incurred by an insured, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Contractual Liability)

29. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent Plaintiffs seek coverage for any liability for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement, and/or any alleged offense(s) for which the insured has assumed liability in a contract or agreement as identified in the Policy issued by Blackboard.

THIRTIETH AFFIRMATIVE DEFENSE

(Knowing Violation of Rights of Another)

30. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek damages arising out of claims in the Underlying Lawsuit for one or more offense(s) caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict personal and advertising injury.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(Breach of Contract)

31. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek damages arising out of claims in the Underlying Lawsuit for one or more offense(s) arising out of breach of contract.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Coverage for Fines, Penalties, Punitive or Exemplary Damages)

32. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred or limited, in whole or in part, to the extent Plaintiffs seek coverage for fines, penalties, punitive or exemplary damages, coverage for which is barred by applicable law and/or public policy, and/or the terms, conditions, exclusions, endorsements, and/or limitations of the Policy issued by Blackboard.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Lead Exclusion Endorsement)

33. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek damages arising out of claims in the Underlying Lawsuit which arose out of or resulted from one or more of the alleged or actual enumerated items of the Lead Exclusion endorsement to the Policy issued by Blackboard.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Fungi or Bacteria Exclusion)

34. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek damages arising out of claims in the Underlying Lawsuit for "bodily injury", "property damage", and/or "personal and advertising injury" (as those terms are defined by the Policy issued by Blackboard) which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" (as that term is defined by the Policy issued by Blackboard) or bacteria on or within a building or structure, including its contents,

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1 regardless of whether any other cause, event, material or product contributed concurrently or in any
2 sequence to such injury or damage.

3 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Condition Precedent - Timely Notice)**

5 35. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
6 claims are barred or limited, in whole or in part, to the extent Plaintiffs failed to provide timely and
7 proper notice of any alleged occurrence(s), and/or failed to provide timely and proper notice of any
8 alleged claim or "suit" instituted against that insured, as those terms are defined in the Policy issued
9 by Blackboard as a condition precedent to coverage.

10 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

11 **(Condition Precedent - Timely Transmittal of Claims)**

12 36. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
13 claims are barred or limited, in whole or in part, to the extent Plaintiffs failed to comply with any
14 obligation in the Policy issued by Blackboard requiring that insured to immediately forward to
15 Blackboard every demand, notice, summons, or legal paper received in connection with a claim or
16 "suit," as those terms are defined in the Policy issued by Blackboard.

17 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

18 **(Other Insurance)**

19 37. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
20 claims are barred or limited, in whole or in part, to the extent they are contrary to applicable "other
21 insurance" and/or "excess insurance" provisions in the Policy issued by Blackboard.

22 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

23 **(Non-Disclosure, Concealment, or Misrepresentation of Facts)**

24 38. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs'
25 claims are barred or limited, in whole or in part, to the extent Plaintiffs failed to disclose, concealed,
26 or misrepresented facts known to them which were material to the risk allegedly underwritten by
27 Blackboard.

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THIRTY-NINTH AFFIRMATIVE DEFENSE

(Genuine Dispute Precludes Bad Faith Claim)

39. As a separate and distinct affirmative defense, Plaintiffs and Blackboard have a genuine dispute in fact and/or in law regarding whether coverage is afforded under the Policy issued by Blackboard, which precludes Plaintiffs' claim for bad faith and breach of covenant of good faith and fair dealing against Blackboard.

FORTIETH AFFIRMATIVE DEFENSE

(No Obligation to Contribute to Attorneys' Fees and Costs)

40. As a separate and distinct affirmative defense, Voyager's claims are barred or limited, in whole or in part, to the extent Blackboard has no obligation to contribute to attorneys' fees and costs sought by Voyager, to the extent that any of those fees are unreasonable in that the amount of time charged for tasks related to said services was excessive, and/or to the extent that the hourly rate charged for tasks related to said services was unreasonable and/or excessive, and/or if any such attorneys' fees/or costs are otherwise unreasonable, excessive, improper, unnecessary or unrelated to the claims.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

41. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs have failed to institute a suit within the period of time required by any applicable statute of limitations and/or to the extent that such claims are otherwise time-barred in equity or law.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Right to Assert Additional Defenses)

42. As a separate and distinct affirmative defense, Blackboard alleges that Plaintiffs' Complaint contains insufficient information to permit Blackboard to raise all appropriate defenses, and Blackboard therefore reserves its right to amend and/or supplement this Answer to assert additional defenses.

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1 WHEREFORE, BLACKBOARD respectfully requests judgment as follows:

2 1. That the Court dismiss all claims against Blackboard with prejudice;

3 2. That judgment be entered in Blackboard's favor with regard to all relief sought by
4 Blackboard in this action;

5 3. That the Court award Blackboard its attorneys' fees and costs incurred in this
6 action; and

7 4. That the Court award Blackboard such other and further relief as the Court deems
8 just and proper.

9 DATED: February 22, 2021

HEROLD & SAGER

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By: /s/Linda L. Sager
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SPECIALTY INSURANCE COMPANY, INC.
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INSURANCE COMPANY, INC.

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